

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JAMES JAY FRANKINA,

Petitioner,

Case Number: 2:05-CV-71159

v.

HON. JOHN CORBETT O'MEARA

DOUG VASBINDER,

Respondent.

**ORDER DENYING PETITIONER'S MOTION FOR CORRECTION
OF JUDGMENT PURSUANT TO FRCP 60(a) AND DENYING REQUEST
FOR CERTIFICATE OF APPEALABILITY**

Petitioner James Jay Frankina filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On June 5, 2007, the Court issued an Opinion and Order denying the petition. Now before the Court is Petitioner's "Motion for Correction of Judgment Pursuant to FRCP 60(a)."

Federal Rule of Civil Procedure 60(a) provides that "clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time . . . on the motion of any party" Fed. R. Civ. P. 60(a). Petitioner argues that the Court erred in not granting or denying a certificate of appealability at the time the Court denied his petition. A district court, in its discretion, may decide whether to issue a certificate of appealability ("COA") at the time the Court rules on a petition for a writ of habeas corpus or it may wait until a notice of appeal is filed to make such a determination. *Castro v. United States*, 310 F.3d 900, 903 (6th Cir. 2002). Thus, the Court's decision not to decide whether to issue a COA at the time the Court denied the petition was not an error

requiring correction and Petitioner's motion shall be denied.

Petitioner also asks this Court to decide, at this time, whether to issue a COA. A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). A petitioner must "show . . . that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citation omitted). In this case, the Court concludes that reasonable jurists would not debate the Court's conclusion that the petition did not present any claims upon which habeas relief may be granted. Therefore, the Court will deny a certificate of appealability.

Accordingly, **IT IS ORDERED** that Petitioner's "Motion for Correction of Judgment Pursuant to FRCP 60(a)" [dkt. # 42] is **DENIED**.

IT IS FURTHER ORDERED that Petitioner's request for a COA is **DENIED**.

s/John Corbett O'Meara
United States District Judge

Date: July 15, 2008

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, July 15, 2008, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager